

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments on the *Notice of Proposed Rulemaking* (“NPRM”) released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceeding pertaining to inmate calling services (“ICS”).² MetroPCS files these brief comments to commend the Commission for taking action on the Wright Petitions and to urge that any regulations adopted in this proceeding be technology neutral by treating inmates’ calls to wireless and wireline phone numbers equally. The following is respectfully shown:

I. INTRODUCTION

MetroPCS applauds the Commission for refreshing the record on inmate calling rates. Inmates and their families typically pay significantly higher toll rates than those normally offered

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 12-167 (rel. Dec. 28, 2012) (“NPRM”).

for interstate, long distance calls.³ This financial burden prevents families from remaining in contact, so MetroPCS encourages the Commission to take steps to assure that prison calling rates are just and reasonable.⁴

In this rulemaking, the Commission should adhere to its fundamental policy of ensuring that its rules are competitively neutral and do not discriminate in favor of one technology over another. Applying this policy, MetroPCS urges the Commission to find that calls from prisons to wireless phone numbers must be treated the same as calls made to wireline phone numbers in the same rate center. ICS providers should not be permitted to discriminate unreasonably against calls to wireless customers when they are using substantially the same service, under substantially the same circumstances and conditions, as calls to wireline customers. Further, lower-income families tend to rely more heavily on wireless services for their telecommunications needs, so any rate discrimination against wireless calls would disproportionately burden them. Such unjust, unreasonable, and discriminatory charges would violate Sections 201 and 202 of the Communications Act of 1934, as amended (the “Act”).

II. INMATES’ CALLS TO WIRELESS AND WIRELINE PHONE NUMBERS SHOULD BE TREATED EQUALLY

It has long been the Commission’s policy to adopt technology-neutral rules that promote innovation and competition. To the extent the Commission adopts regulations as a result of this proceeding, it should apply this sound policy and not permit an ICS provider to charge more for calls to a wireless phone number than it charges for calls to a wireline number in the same rate

³ MetroPCS has long been an advocate of pro-competitive Commission policies because market forces drive consumer prices down to beneficial levels when competition is robust. The higher toll rates paid by inmates and their call recipients are a direct result of the fact that inmate calling services generally are provided as a monopoly service. *NPRM* at ¶ 5.

⁴ The disparities in rates outlined in paragraph 2 of the *NPRM* are sufficiently great to create a *prima facie* case that action by the Commission is needed.

center. MetroPCS raises this point because the *NPRM* specifically seeks comment on issues associated with non-geographic phone numbers.⁵ The *NPRM* asks about a practice where people who receive calls from inmates in interstate prisons obtain phone numbers that are local to the prisons in order to take advantage of lower local calling rates. Because call recipients may be able to obtain these non-geographic numbers from wireless carriers, MetroPCS wants to assure that calls to non-geographic wireless numbers are treated fairly.

Not long ago, at least one ICS provider attempted to impose a surcharge on phone calls that inmates made to wireless phone numbers in an overly-broad and ill-conceived attempt to charge out-of-state call recipients higher fees. The rationale for the discriminatory charge was that the ICS provider was being denied some toll revenues from interstate families that used local numbers, so it would recoup the lost revenue against calls to all wireless numbers.⁶ MetroPCS, along with other wireless carriers, contested this practice in several states as being unjust, unreasonable, and discriminatory, and the ICS provider either withdrew or postponed the tariffs.⁷

MetroPCS files these targeted comments to urge the Commission to continue its long-standing practice of adopting technology-neutral rules, which will ensure that unjust and discriminatory tariffs, like the one described above, are not permitted. Inmates' calls to wireless

⁵ *NPRM* at ¶ 41.

⁶ The predicate for this concern is the notion that customers are avoiding toll expenses that the ICS provider is entitled to receive. This is a false assumption. Because the ICS provider is no longer providing a toll service to the new, local phone number, it should not be entitled to recoup "lost" toll revenues.

⁷ *E.g., In the Matter of Tariff Filing by Global Tel*Link Corporation to Update Check Sheet and Add Wireless Termination Surcharge Language*, Comments in Objection, New York State Public Service Commission, Matter No. 11-00513 (filed Apr. 21, 2011); *In the Matter of Global Tel*Link Corporation Tariff Revision for Georgia Tariff No. 4 to Add Wireless Termination Surcharge Language*, Complaint and Petition to Cancel Tariff, Georgia Public Service Commission, Docket No. 33710-U (filed May 11, 2011).

and wireline phone numbers must be treated equally under any regulations that are adopted in this proceeding. Sections 201 and 202 of the Communications Act require common carriers, including those that provide inmate calling services, to charge just, reasonable, and non-discriminatory rates.⁸ There is no reasonable basis for calls to non-geographic wireless numbers to be charged more, especially because the ICS provider is not providing a toll service when wireless phone numbers are local to the prison. Accordingly, the Commission must ensure that ICS providers are not able to charge different customers different amounts for essentially the same service, under substantially the same circumstances and conditions, without a rational basis for doing so.⁹

For example, when an inmate calls his wife at home on her landline phone, the inmate or the wife will be charged a specified rate. If the inmate then calls his wife's next-door neighbor, who is sitting on her porch with a cell phone that is rated in the same locale, neither the neighbor nor the inmate should have to pay a surcharge to complete the call. Instead, the calls to both the neighbor and the wife should give rise to the same charges for equivalent services. If, instead, ICS providers are permitted to penalize wireless customers for receiving calls from incarcerated individuals, the charges may negatively affect a broad swath of people because 88 percent of adults own a cell phone,¹⁰ and at least 34 percent of households have only a wireless phone.¹¹

⁸ 47 U.S.C. §§ 201, 202.

⁹ Allowing ICS providers to impose surcharges on wireless carriers would be disproportionately harmful to prepaid services providers like MetroPCS who charge a flat monthly rate to end users and cannot pass through charges of this nature. The ultimate result would be higher costs and higher fees to the many lower-income families that make up a significant portion of subscribers to prepaid wireless services and lifeline services.

¹⁰ Kathryn Zickuhr and Aaron Smith, *Digital Differences*, Pew Research Center, Apr. 13, 2012, available at http://pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf.

Further, lower-income families disproportionately make up the number of wireless-only households: in the second half of 2011, 51.4 percent of poor adults lived in wireless-only households, a number that has consistently grown over time.¹² Allowing ICS providers to charge more for calling wireless numbers would result in increased costs that lower-income families cannot afford. Consequently, any rules adopted in this proceeding should require ICS providers to treat wireline and wireless calls the same when they are rated in the same rate center.¹³ Discriminating between calls to wireless and wireline numbers is contrary to the public interest and will impede competition if it is permitted. Alternatively, treating wireless and wireline subscribers equally will promote competition by maintaining a level playing field among and between competing voice providers.

In order to protect consumers, foster competition, and implement the Communications Act's requirements, to the extent the Commission acts upon the issue in this proceeding, it should prevent ICS providers from charging unjust, unreasonable, or discriminatory rates for calls to wireless phone numbers.

(...continued)

¹¹ Stephen Bloomberg and Julian Luke, *Wireless Substitution: State-level Estimates From the National Health Interview Survey, 2010–2011*, Centers for Disease Control, Oct. 12, 2012, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr061.pdf>.

¹² Stephen Blumberg and Julian Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2011*, Centers for Disease Control, June 2012, available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201206.pdf>.

¹³ Equal treatment should be applied even in situations where wireless calling areas are broader than wireline calling areas. This principle is consistent with Section 251(b)(5) of the Communications Act and the FCC's implementing intra-MTA rule, which mandate that calls between CMRS carriers and local exchange carriers that originate and terminate calls in the same major trading area ("MTA") are subject to reciprocal compensation charges rather than interstate and intrastate access charges. 47 C.F.R. § 51.701(b)(2).

III. CONCLUSION

MetroPCS applauds the Commission for taking action on the Wright Petitions to address the disproportionately large cost of making phone calls from prisons. To the extent the Commission adopts rules or regulations in this proceeding, it should ensure that inmate calling service providers do not charge unjust, unreasonable, or discriminatory rates. Specifically, the Commission should ensure that inmate calling services are not permitted to charge higher rates to complete calls from prisons to non-geographically based wireless phone numbers than it charges to complete calls to comparable wireline numbers. Instead, calls to wireline and wireless phone numbers in the same rate centers should be treated equally.

Respectfully submitted,

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